IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

GREGORY WALKER JOHNSON,	:	
Plaintiff,	:	Case No. 3:08cv00461
vs.	:	District Judge Thomas M. Rose Magistrate Judge Sharon L. Ovington
LEVI STRAUSS, *et al.*,	:	
Defendants.	:	

REPORT AND RECOMMENDATIONS[1]

A prior Decision and Entry in this care resulted in the dismissal of Plaintiff's claims against Defendants VF Sportswear, Inc. and VF Jeanswear Limited Partnership. (Doc. #65). Plaintiff's claims against the remaining defendants have likewise been dismissed, with the sole exception of his claims against Defendant VF Corporation Wrangler and Nautica. (Doc. #s 4, 62).

Although a service of summons sent to VF Corporation Wrangler and Nautica was returned executed (Doc. #7), Defendants VF Sportswear, Inc. and VF Jeanswear Limited Partnership explain in their Answer that they are "unaware of the existence of any entity bearing the name "VF Corp – Wrangler Nautica." (Doc. #37, p.1 at n.1). Assuming no such entity exists, Plaintiff's Complaint cannot raise a plausible claim for relief against a non-existent corporation. On the other hand, assuming in Plaintiff's favor that such an entity exists, the record does not contain an Answer or other response to the Complaint by an entity known as VF Corporation Wrangler Nautica. Yet, Default Judgment is not

[1] Attached hereto is NOTICE to the parties regarding objections to this Report and Recommendations.

warranted against VF Corporation Wrangler Nautica because Plaintiff's Complaint fails to state a claim for relief, as previously explained when granting the other Defendants' dispositive Motions. *See* Doc. #s 52, 62, 63 65. Default Judgment under Fed. R. Civ. P. 55 cannot be entered against a party when the Complaint fails to state a claim upon which relief can be granted. *See Jackson v. Correctional Corporation of America*, 564 F.Supp.2d 22, 26-27 (D.D.C. 2008)(and cases cited therein).

In addition, Counter Claimants VF Jeanswear Limited Partnership, VF Sportswear, Inc. have recently filed a Notice of Voluntary Dismissal of their counterclaims against Plaintiff. (Doc. #66). Because Plaintiff's claims against these Defendants have been dismissed, these Defendants' voluntary dismissal of their counterclaims leaves no claim pending between Plaintiff and these Defendants.

Accordingly, for the above reasons, no claim, no counterclaim, and no motion remains pending in this case. It is therefore RECOMMENDED that (1) Plaintiff's Complaint be DISMISSED in its entirety; and (2) the case be terminated on the docket of this Court.

November 17, 2009

s/Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).